

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Wade Stephney, Jr.,	)	Civil Action No.: 4:08-3449-MBS-BHH
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER AND REPORT AND</u></b>
	)	<b><u>RECOMMENDATION</u></b>
Michael J. Astrue, Commissioner of	)	
Social Security	)	
	)	
Defendant.	)	

This matter is before the Court on the defendant's motion to dismiss and for entry of final judgment [Doc. 54] and the plaintiff's motion to compel discovery and for an evidentiary hearing [Doc. 59.]

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) DSC, all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

**DISCUSSION**

The Court has already dismissed the entirety of the plaintiff's claims in this case without prejudice [Doc. 41] and has retained jurisdiction over it only insofar as the Social Security Administration's counterclaim remained pending, *see id.* The defendant has now indicated that it will pursue such counterclaim through administrative action and wishes to have it dismissed without prejudice, here. The plaintiff appears to contest such dismissal, but it is not clear why. [See Doc. 57.] The Court is not otherwise aware of any reason why the defendant should not be allowed to withdraw its claims against the plaintiff. In fact, such a decision might actually enure to the plaintiff's benefit. Regardless,

the Court would grant the motion, without any evidence of prejudice to the plaintiff or improper motive of the defendant.

For these same reasons, the Court would deny the plaintiff's motion to compel and for an evidentiary hearing.

### **CONCLUSION**

Wherefore, based upon the foregoing, it is RECOMMENDED that the defendant's motion to voluntarily dismiss its counterclaim *without prejudice* be GRANTED. It is ORDERED that the plaintiff's motion to compel and for an evidentiary hearing [Doc. 59] is DENIED.

IT IS SO RECOMMENDED AND ORDERED.

s/Bruce Howe Hendricks  
United States Magistrate Judge

July 22, 2010  
Greenville, South Carolina

**The Plaintiff's attention is directed to the important notice on the next page.**